

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DON RYAN**, on January 26, 2005 at 3:10 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Don Ryan, Chairman (D)
Sen. Gregory D. Barkus (R)
Sen. Jerry W. Black (R)
Sen. Jim Elliott (D)
Sen. Kim Gillan (D)
Sen. Bob Hawks (D)
Sen. Sam Kitzenberg (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Bob Story Jr. (R)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Lois O'Connor, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing and Date Posted: None.
Executive Action: SB 170; SB 198; SB 224; SJ 2

SEN. RYAN appointed **SENATORS KITZENBERG, BARKUS, LASLOVICH, AND GILLAN** to a subcommittee on SB 147 and SB 177. The Subcommittee will meet in Room 303 immediately following the presentation before the House Select Committee on Education by **Madalyn Quinlan, OPI**, on Montana's current school funding system.

{Tape: 1; Side: A; Time Counter: 4.3}

EXECUTIVE ACTION ON SB 170

Motion: **SEN. MANGAN** moved that SB 170 DO PASS and moved amendment #SB017001.ace.

EXHIBIT(eds20a01)

Discussion: **SEN. MANGAN** said that SB017001.ace is an amendment suggested by **Madalyn Quinlan, OPI**, to make consistent language throughout SB 170.

SEN. STORY questioned the accuracy of the amendment language. Following a clarification by **Madalyn Quinlan, OPI**, the amendment was found to be correct.

Vote: **SEN. MANGAN'S** amendment carried unanimously by voice vote.

Motion: **SEN. MANGAN** moved that SB 170 DO PASS AS AMENDED.

{Tape: 1; Side: A; Time Counter: 11.8}

Motion: **SEN. STORY** moved amendment #SB017004.ace.

EXHIBIT(eds20a02)

Discussion: **SEN. STORY** said that if a school missed one day and did not make it up, they were penalized for two days. Existing language only penalizes them one day. Amendment #SB017004.ace will change that to proportional aggregate hours times two to put the penalty back to its previous form.

SEN. GILLAN questioned why schools were penalized for two days for missing one day. **SEN. STORY** said was unsure but believed that if a school missed a day, it was more of an incentive for them to make it up. If they did not make it up, it cost them two days of ANB funding.

SEN. MANGAN said that when SB 170 was drafted, days and hours were changed around to allow for flexibility. The amendment is a

policy decision that the Committee needs to make; and if it is the intention of the Committee to keep the 1-day penalty, it was not the intent of SB 170. The intent of SB 170 is the language proposed by **SEN. STORY'S** amendment. **SEN. STORY** requested clarification of his amendment.

Ms. Quinlan said that OPI would understand the intent of #SB017004.ace as drafted. However, the language would be clarified if it reflected "actual number of aggregate hours less than the minimum aggregate hours provided by the school district times two". **SEN. GILLAN** asked if many schools were docked for not providing enough days of education. **Ms. Quinlan** said that she is aware of a few times that it has happened. **SEN. GILLAN** questioned why a school would purposely not make up a day knowing that there would be a financial penalty. She said that the Committee had the opportunity to change policy to provide more flexibility and local control which is the purpose of SB 170. She opposed amendment #SB017004.ace.

Vote: **SEN. STORY'S** amendment #SB017004.ace carried on a 7 to 3 roll call vote with **SENATORS GILLAN, HAWKS, AND LASLOVICH** voting nay.

{Tape: 1; Side: A; Time Counter: 22.9}

Motion: **SEN. MANGAN** moved that SB 170 DO PASS AS AMENDED and moved amendment #SB017003.ace.

EXHIBIT (eds20a03)

Discussion: **SEN. MANGAN** said that SB017003.ace is a policy amendment and addresses the implementation of a snow or emergency day that would not penalize school districts.

SEN. GILLAN asked if schools are given the flexibility to make the emergency day up, will they be penalized under other provisions in SB 170. **SEN. MANGAN** said that it was not the intent of the amendment. **Ms. Quinlan** said that if the amendment does not include language that specifically ties it back to the section previously amended, it would not be clear. She said that under current law, if a school closes because of an emergency, then the trustees declare an emergency and schools must make a reasonable effort to make up three days or whatever amount of time is missed but not to exceed three days. Schools would be penalized if they did not make up at least three days.

SEN. MANGAN asked if language stating "not subject to the requirements of" could be added to amendment 4 of SB017003.ace

and would it fix the problem. **Ms. Quinlan** said yes that it would basically say that "without any penalty under 20-1-301, MCA".

SEN. STORY said that the language does not belong under 20-9-806, MCA, because a declaration would be needed. He felt that a whole NEW SECTION would be needed.

Because of the confusion of the proposed amendments and because of the possibility of adding a NEW SECTION, **SEN. MANGAN** withdrew his Do Pass As Amended motions and requested postponement of Executive Action on SB 170 until a later date.

{Tape: 1; Side: B; Time Counter: 3.6}

EXECUTIVE ACTION ON SB 198

Motion: **SEN. KITZENBERG** moved that SB 198 DO PASS.

Discussion: **SEN. KITZENBERG** said that after his own poll of Montana's school districts about "bullying" policies, he found that there was a wide variation of language covering bullying, many lacked a definition of "harassment", some did not prohibit retaliation for reporting harassment, and many do not enumerate categories. Of 39 districts surveyed, 19 or 49% had no specific harassment or bullying policy and 4 or 10% had comprehensive policies. In addition, MTSBA issued a survey finding that 17 schools had anti-harassment policies, 2 had specific comments about harassment in their student handbooks, less than one-half reported no specific harassment policy, and many schools reported that they were working on a policy. He added that the surveys reaffirmed his feeling that many school districts have passed the buck.

SEN. KITZENBERG said that attempts have been made to get local school districts to establish bullying policies because there is a need to do it. According to a memo from one school administrator, establishing a bullying policy could increase the school's liability and parents will sue. **SEN. KITZENBERG** felt the school would be in a better place if it had a policy in place. Parent would have to prove deliberate indifference--that the school has not taken a stance to address the issue.

SEN. KITZENBERG said that SB 198 would allow students to come to school and learn without harassment and bullying and it has no fiscal impact. He added that "When we are silent, we give our approval", and public schools need to address it. All SB 170 requests is that all public schools have a harassment and bullying policies. When bullying escalates to threatening a

student's safety, why should school districts be allowed to do nothing about it. SB 198 is about protecting all students.

{Tape: 1; Side: B; Time Counter: 17.9}

SEN. GILLAN said that some school officials think that if its not on paper, it does not exist. While a piece of paper is not going to stop bullying, it is important to have a policy written down. It is time to raise the bar on bullying in public schools because it could be an important ingredient in a quality education.

SEN. McGEE said that SB 198 is unnecessary because every school district can currently establish and adopt bullying or harassment policies; and it is, whether believable or not, a part of the homosexual agenda. To require or force sexual orientation into school policies is a slap in the face of every decent citizen of the state. **SEN. McGEE** opposed SB 198. He said with bill like SB 198, the Legislature is going to undo everything that this country and state have been founded on. In the interest of trying to eliminate bullying, the Legislature is doing a back-door on sexual orientation. Sexual orientation is not just homosexuality.

SEN. MANGAN said that it is unfortunate that the debate has gone to homosexuality instead of staying with the issue--local control. SB 198 is not about the homosexual agenda. It is about students getting harassed for a variety of different reasons, and it does not have "gay" in one bold line. He added that it is also unfortunate that school districts have not reviewed this issue, regardless of whether sexual orientation is included or not, because bullying exists, schools know it, and they do nothing about it. **SEN. MANGAN'S** concern is that SB 198 is only asking that schools adopt a harassment policy with specific requirements, but it does not contain an enforcement policy.

SEN. ELLIOTT said that there are two reasons to oppose SB 198, (1) the hypothetical use of local control by the Legislature and (2) that sexual orientation is included in the bill. He relayed a story about a friend who stuck up for a young Black man on a train during WWII by saying, "He is only a victim of circumstance. He did not ask to be what he is." He also spoke about the prejudices that existed in the South during the 1950s and 1960s. He said that at the time, there was a Black agenda which was to be treated like a human being and not be vilified for something that one could not help.

SEN. ELLIOTT said that there is the perception that homosexuality is a choice, but there is ample scientific evidence to disprove that perception. However, a there is evidence that a person who

is homosexual is subjected to vilification, bullying, mutilation, and death. Homosexuality is a condition of circumstance. He felt that people were confusing sexual orientation with sexual practice, and it would not be a slap in the face to him but a statement of character for the Legislature to show respect to all citizens of the state regardless of anything.

{Tape: 2; Side: A; Time Counter: 4.9}

SEN. RYAN felt that by striking the "sexual orientation" language from SB 198, the bill would not do anything. Many students drop out of school because of perceived notions. Schools must realize that it makes education a more difficult process for them and students. It is time for the Legislature to tell school districts to address this issue so that every child has equal access to education.

SEN STORY opposed SB 198 on the reason of local control. He said that the Legislature has passed previous legislation that told school districts what to do, and they have not done them, such as Indian Education For All. If SB 198 is going to work, it must include a penalty phase.

Vote: **SEN. KITZENBERG'S** motion that SB 198 DO PASS carried 7 to 4 by roll call vote with **SENATORS BARKUS, BLACK, MCGEE,** and **STORY** voting nay. **SEN. BLACK** voting nay by proxy.

{Tape: 2; Side: A; Time Counter: 9.0}

EXECUTIVE ACTION ON SB 224

Motion: **SEN. LASLOVICH** moved that SB 224 DO PASS.

Because of the absence of a fiscal note and because, according to Joint Rule 40-100, a bill could not be reported from a Committee for Second Reading unless the bill is accompanied by the fiscal note, **SEN. LASLOVICH** withdrew his motion and requested that Executive Action on SB 224 be postponed.

{Tape: 2; Side: A; Time Counter: 12.2}

EXECUTIVE ACTION ON SJ 2

Motion: **SEN. BARKUS** moved that SJ 2 DO PASS.

Because amendments were being prepared for SJ 2 and because he had not had a chance to review them, **SEN. BARKUS** withdrew his motion and requested that Executive Action on SJ 2 be postponed.

{Tape: 2; Side: A; Time Counter: 14.0}

Committee Business: **Ms. Quinlan** provided the Committee with the two information requests related to SB 147--one addressing county retirement and the subsidies that various counties are eligible for and a survey of school districts that listed districts that were charging retirement benefits for employees who were paid from federal funds, which districts were charging to the federal fund for retirement benefits, and which districts were charging the district retirement fund and county levy.

EXHIBIT(eds20a04)

EXHIBIT(eds20a05)

The Subcommittee on SB 147 and SB 177 will meet on Friday, January 28, 2005, immediately following the presentation on school funding by **Ms. Quinlan** to the House Select Committee on Education.

ADJOURNMENT

Adjournment: 4:25 P.M.

SEN. DON RYAN, Chairman

LOIS O'CONNOR, Secretary

DR/lo

Additional Exhibits:

EXHIBIT ([eds20aad0.TIF](#))